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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
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12 JOSE GOMEZ, individually and on  
13 behalf of a class of similarly situated  
individuals,

14 Plaintiff,

15 v.

16 CAMPBELL-EWALD COMPANY, a  
17 Delaware corporation,

18 Defendant.  
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Case No. CV10-2007-DMG (CWx)

Assigned to Hon. Dolly M. Gee

OFFER OF JUDGMENT PURSUANT  
TO FEDERAL RULE OF CIVIL  
PROCEDURE 68

1           1.       Pursuant to Federal Rule of Civil Procedure 68, Defendant Campbell-  
2 Ewald Company (“C-E”) hereby offers to allow judgment to be entered against it in  
3 this action in the amount of \$1503 for each unsolicited text message that plaintiff  
4 Jose Gomez (“Gomez”) allegedly received from or on behalf of C-E. In addition,  
5 C-E agrees to pay Gomez for any costs which are recoverable in this action, as  
6 determined by the Court.

7           2.       This offer of judgment includes \$1503 per text message (\$501 trebled)  
8 that Gomez has requested as damages for alleged violation of the Telephone  
9 Consumer Protection Act (“TCPA”). Gomez has alleged that he received one text  
10 message from or on behalf of C-E on May 11, 2006. C-E will pay Mr. Gomez  
11 \$1503 for the alleged text message.

12           3.       C-E will pay an additional \$1503 per text message for any other  
13 unsolicited text messages that Mr. Gomez alleges were sent to him in the “several  
14 months” following May 11, 2006, as alleged in Paragraph 18 of his complaint,  
15 provided that Mr. Gomez and his counsel have a reasonable belief satisfying Federal  
16 Rule of Civil Procedure 11 that such messages were sent by or on behalf of C-E.

17           4.       Campbell-Ewald further offers to pay for any and all reasonable costs  
18 allowable under law incurred by Gomez or his attorneys in this matter. Gomez must  
19 file a Notice of Application to the Clerk to Tax Costs pursuant to Local Rule 54-2 to  
20 recover such costs. Attorneys’ fees are not recoverable under the TCPA.

21           5.       Campbell-Ewald further offers to allow the Court to enter an injunction  
22 in the form proposed in Exhibit 1.

23           6.       This offer is intended to fully satisfy the individual claims of Gomez  
24 asserted in this action or which could have been asserted in this action.

25           7.       Pursuant to Federal Rule of Civil Procedure 68, this offer of judgment  
26 is made at least fourteen days before the date set for trial. This offer shall be  
27 deemed withdrawn unless written notice of acceptance is received within fourteen  
28 days of service.

1           8.       This offer of judgment is made for purposes of Rule 68 only and shall  
2 not constitute or otherwise be construed as an admission of liability in any respect.

3 Dated: January 5, 2011

LOEB & LOEB LLP  
MICHAEL L MALLOW  
LAURA A. WYTSMA  
CHRISTINE M. REILLY

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7 By           /s/ Laura A. Wytsma            
          Laura A. Wytsma  
          Attorneys for Defendant  
          CAMPBELL-EWALD COMPANY

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